

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THOMAS ANDREWS, et al.,

Plaintiffs,

vs.

TRAVIS J. LUDLOW, et al.,

Defendants.

ORDER ADOPTING
REPORT AND RECOMMENDATION

Case No. 2:19-cv-00287-TC-CMR

On April 29, 2019, Plaintiffs Thomas Andrews and Ruthellen Sheflin filed this action against Defendants Travis Ludlow, Priority Homes, LLC, and Heidi Watts, alleging that Defendants wrongfully sold property that belonged to Plaintiffs. On January 08, 2020, the court granted Plaintiffs' motion to amend the complaint, and the first amended complaint was filed on the same date. (ECF No. 34.)

Three motions are now pending before the court. First, Mr. Ludlow and Priority Homes have moved to dismiss the amended complaint.¹ (ECF No. 38.) Second, after Plaintiffs lodged a "Third Amended Complaint," (ECF No. 37), Mr. Ludlow and Priority Homes filed a motion to strike the purported amendment. (ECF No. 40.) Finally, Plaintiffs have withdrawn their purported amendment (ECF No. 76) and instead filed a motion for leave to amend the complaint. (ECF No. 65.)

¹ The third Defendant, Ms. Watts, did not join in the motion because she has not yet been served with the complaint.

The motion to dismiss, motion to strike, and motion for leave to amend were all referred to United States Magistrate Judge Cecilia M. Romero under 28 U.S.C. § 636(b)(1)(B). (ECF No. 77.) On April 29, 2020, Judge Romero issued her Report and Recommendation. (ECF No. 79.) Objections to the Report and Recommendation were due within fourteen days of service of the order. Thirty days have now passed and no objections have been filed.

Judge Romero recommends that the motion to strike be denied as moot, in light of Plaintiffs' withdrawal of the document that Defendants sought to strike. Judge Romero also recommends that the motion to dismiss be granted in part and denied in part, and that the motion for leave to amend be granted in part and denied in part. Finally, in determining the proper scope of Plaintiffs' proposed amended complaint, Judge Romero recommends that Ms. Watts be dismissed from the action due to Plaintiffs' failure to serve the complaint upon her, despite having had more than a year to do so.

The court has carefully reviewed Judge Romero's Report and Recommendation and finds that it is correct in all respects. Accordingly, the Report and Recommendation is adopted as the opinion of the court, and the court orders the following:

1. Defendants' Motion to Strike (ECF 40) is DENIED as moot.
2. Defendants' Motion to Dismiss (ECF 38) is GRANTED, with prejudice, for the third and sixth causes of action; is GRANTED, without prejudice, for the first, fourth, fifth, seventh, eighth, and ninth causes of action; and is DENIED for the second cause of action.
3. Plaintiffs' Motion to Amend (ECF 65) is GRANTED in part and DENIED in part.

Plaintiffs are ordered to file a Second Amended Complaint within twenty days. The complaint must be limited to claims for fraud, breach of contract, fraud in the

inducement, constructive fraud, civil conspiracy, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty, and may only be brought against Mr. Ludlow and Priority Homes. No other causes of action or defendants will be allowed.

4. Defendant Heidi Watts is dismissed without prejudice due to the lack of service upon her.

SO ORDERED this 29th day of May, 2020.

BY THE COURT:



TENA CAMPBELL
U.S. District Court Judge